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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/258,129    02/26/99    LAYNE

H    F0375DT-US

EXAMINER

PM82/1020

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ART UNIT

PAPER NUMBER

3635

DATE MAILED:

10/20/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/258,129**

Applicant(s)  
**Layne**

Examiner  
**Robert Canfield**

Group Art Unit  
**3635**



☒ Responsive to communication(s) filed on Feb 26, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-27 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☒ Claim(s) 11, 12, 14-17, 23, 24, 26, and 27 is/are allowed.

☒ Claim(s) 1-10, 13, 18, 19, 21, 22, and 25 is/are rejected.

☒ Claim(s) 20 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Feb 26, 1999 is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. This is a first Office action on the merits for application serial number 09/258129 filed 02/26/99. This application has been filed as a reissue of U.S. Patent No. 5,649,391. Claims 1-27 are pending.
2. This reissue application was filed without the required offer to surrender the original patent or, if the original is lost or inaccessible, an affidavit or declaration to that effect. The original patent, or an affidavit or declaration as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.
3. The drawings are objected to because the top view in figure 3 is missing semi-circular lines to designate the cross section ends of bars 22, 24, 26 and 28. Correction is required.
4. Applicant is advised that should claim 19 be found allowable, claim 22 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). The claims are identical.
5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claims 2-7, 9, 10, 13, 19, 22 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The ranges for the first length and width recited in dependent claims 2, 3 and 9 do not fall within the ranges set forth in independent claim 1 rendering the claims indefinite. For example claim 1 requires the first length to be between 15" and 17". Claim 2 which depends from claim 1 states that the first length is between 8 ½" and 8 ¾".

In claims 4, 10, 13, 19, 22 and 25 "said first and second vertical spacer members" lack a proper antecedent basis.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 2,173,020 to Kubach.

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The block shown in figures 2 and 3 has first and second metal plates spaced by a pair of vertical spacer members. A cavity is formed therebetween.

9. Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 2,205,730 to Morgan.

The blocks shown in figures 3-5 have first and second metal plates spaced by a pair of vertical spacer members. A cavity is formed therebetween.

10. Claims 18, 19, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,076,177 to Chien.

Figure 7 of Chien provides first and second metal rectangular plates spaced by at least three spacer members forming cavities.

Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-3, 8, 9, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,173,020 to Kubach.

The block shown in figures 2 and 3 has first and second metal plates spaced by a pair of vertical spacer members. A cavity is formed therebetween.

Kubach fails to provide the claimed dimensions or that one of the plates is provided with holes for receiving a threaded connector.

One of ordinary skill in the art would have readily recognized that the dimensions of the block of Kubach could be modified to meet particular design specifications. The claims ranges for the length, width and depth of the block would have been obvious choices of design at the time of the invention to one having ordinary skill in the art as they fall within the typical size range known in the art for building blocks. There is no criticality to the dimensions other than the fact that they are sized to be used in a particular environment (a concrete wall). One of ordinary skill in the art would have readily recognized that the size of the blocks of Kubach could be modified. See MPEP 2144.04 which discusses that a change in size is not sufficient to establish patentability.

The examiner takes Official Notice that it is extremely well known in the building arts to provide a hole in a wall to secure a fastener thereto and that it would have been obvious at the

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time of the invention to one having ordinary skill in the art to have provided holes in the walls of the block of Kubach if one wished to attach a bracket.

13. Claims 1-3, 8, 9 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,205,730 to Morgan.

The blocks shown in figures 3-5 have first and second metal plates spaced by a pair of vertical spacer members. A cavity is formed therebetween.

Morgan fails to provide the claimed dimensions or that one of the plates is provided with holes for receiving a threaded connector.

One of ordinary skill in the art would have readily recognized that the dimensions of the block of Morgan could be modified to meet particular design specifications. The claims ranges for the length, width and depth of the block would have been obvious choices of design at the time of the invention to one having ordinary skill in the art as they fall within the typical size range known in the art for building blocks. There is no criticality to the dimensions other than the fact that they are sized to be used in a particular environment (a concrete wall). One of ordinary skill in the art would have readily recognized that the size of the blocks of Morgan could be modified. Morgan even provides suggestion that the dimensions may be varied at line 40 of column 2 of

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page 1. See MPEP 2144.04 which discusses that a change in size is not sufficient to establish patentability.

The examiner takes Official Notice that it is extremely well known in the building arts to provide a hole in a wall to secure a fastener thereto and that it would have been obvious at the time of the invention to one having ordinary skill in the art to have provided holes in the walls of the block of Morgan if one wished to attach a bracket.

14. Claims 1-4, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,076,177 to Chien

Figure 7 shows first and second metal plates spaced by at least three vertical spacer members. Cavities are formed therebetween.

Chien fails to provide the claimed dimensions or that one of the plates is provided with holes for receiving a threaded connector.

One of ordinary skill in the art would have readily recognized that the dimensions of the shelving unit of Chien could be modified to meet particular design specifications. See MPEP 2144.04 which discusses that a change in size is not sufficient to establish patentability.

Again note that the intended use has not been given patentable weight.



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15. Claims 11, 12, 14-17, 23, 24, 26 and 27 are allowed.
16. Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
17. Claims 5=7, 13 and 25 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112 set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.
18. The following is a statement of reasons for the indication of allowable subject matter: a mounting device as claimed in combination with the reinforcing bars as well as the claimed method steps are not taught or adequately suggested in the prior art of record.
19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art listed on the parent patent as well as art found by the examiner during his search which is considered pertinent to the disclosure is listed on the attached PTO 892 form.

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20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Canfield whose telephone number is (703) 08-2482.

Robert Canfield

October 18, 1999

**Robert Canfield**  
**Primary Examiner**